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MEMORANDUM

TO: Service List: Fitchburg Gas and Electric Light Company, D.T.E. 99-66

FROM: Robert J. Howley, Hearing Officer

DATE: March 13, 2001

RE: Hearing Officer Ruling

CC: Mary L. Cottrell, Secretary
Commission

Hearing Officer Ruling on Attorney General's Motion Pursuant to 220 C.M.R. § 1.10

I. INTRODUCTION

On February 28, 2001, the Hearing Officer issued a ruling directing the Attorney General of the Commonwealth of Massachusetts ("Attorney General") to specify which portions of the record of Fitchburg Gas and Electric Light Company, D.T.E. 98-51 (1998), that he sought to incorporate by reference in this proceeding. Fitchburg Gas and Electric Light Company, D.T.E. 99-66, at 2, Hearing Officer Ruling (February 28, 2001). On

March 2, 2001, the Attorney General specified the portions of the record that he proposed to incorporate in this proceeding ("Attorney General Specification"). (1) Fitchburg Gas and Electric Light Company ("Fitchburg" or the "Company") filed a response to the Attorney General's Specification on March 7, 2001 ("Fitchburg Response").

II. POSITIONS OF THE PARTIES

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In addition to specifying certain portions of the record, the Attorney General reserved "...his rights to designate additional portions of the record [in D.T.E. 98-51] which may be necessary during the preparation of his Reply brief" (Attorney General Specification at 1). The Company argues that the Attorney General should not be allowed to specify additional portions of the record "...to remove the prospect of prejudice and to ensure that [Fitchburg] is not forced to write its brief based on a moving target" (Fitchburg Response at 1). In addition, the Company opposes the Attorney General's request to incorporate by reference the briefs filed in D.T.E. 98-51 (id. at 2). Fitchburg maintains that "...the briefs of the parties cannot inform the Department in any manner that can supplant or supplement the complete evidentiary record contained in this proceeding" (id.). Finally, with respect to the Attorney General's request to incorporate Transcript Volume 10, Fitchburg objects to the incorporation of only this volume as it contains a portion of multi-day cross-examinations of pertinent Fitchburg witnesses (id.). Fitchburg requests that the Department also incorporate Transcript Volumes 11, 12 and 13 to give the testimony of the Company's witnesses a proper context (id.).

III. ANALYSIS AND FINDINGS

The Attorney General has proposed to incorporate by reference the briefs in

D.T.E. 98-51. Pursuant to 220 C.M.R. § 1.10 (3), only "evidence" should be incorporated by reference from another proceeding. Since briefs are not evidence and because the briefs in D.T.E. 98-51 could not offer any useful information to supplement the evidentiary record in D.T.E. 99-66, the briefs in D.T.E. 98-51 will not be incorporated in this proceeding.

The Attorney General has also sought to incorporate Transcript Volume 10 in this proceeding. Because this transcript volume relates to a discussion of the Company's inventory finance charges, it may be helpful to the Department's investigation. The Attorney General's request is, therefore, allowed. However, because there is further testimony regarding the Company's inventory finance charges in Transcript Volumes 11, 12 and 13, these volumes will also be incorporated by reference into this proceeding.

The February 28, 2001 Hearing Officer ruling directed the Attorney General to specify by March 2, 2001 all portions of the record in D.T.E. 98-51 that he proposed to incorporate in this proceeding. Fitchburg Gas and Electric Light Company, D.T.E. 99-66, at 2, Hearing

Officer Ruling (February 28, 2001). This deadline was necessary to permit both parties sufficient time to review and address the relevant portions of D.T.E. 98-51 in their respective

briefs. Given the briefing schedule in this proceeding, (2) the Attorney General will not be permitted to designate any additional portions of D.T.E. 98-51 to be

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incorporated by reference in this proceeding.

Under the provision of 220 C.M.R. § 1.06 (6)(d)(3), any aggrieved party may appeal this ruling to the Commission by filing a written appeal with supporting documentation by

close of business, Monday, March 19, 2001. A copy of this ruling must accompany any appeal. A response to any appeal must be filed by close of business, Wednesday,

May 21, 2001. Extensions to the deadlines in this ruling may be made for good cause shown.

1. The Attorney General requests that the following portions of the record in

D.T.E. 98-51 be incorporated by reference into the record of D.T.E. 99-66: Briefs of the Attorney General and the Company; Exhibits FGE-LMB-1, FGE-LMB-2,

AG-RR-45, AG-RR-45A, DTE-RR-32, FGE-JLH-6-5 and Transcript Volume 10 (Attorney General Specification at 1).

2. On Friday, March 9, 2001 the Attorney General filed his Initial Brief. Fitchburg will file its Initial Brief this Friday, March 16, 2001. Thereafter, the Attorney General's Reply Brief is due Friday, March 23, 2001. Fitchburg's Reply Brief is due Friday, March 30, 2001.